

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREDERICK JONES,

Plaintiff,

v.

DEPARTMENT OF HOUSING :
PRESERVATION AND DEVELOPMENT, :
DEPARTMENT OF HOUSING AND :
URBAN DEVELOPMENT, and ALLEN :
A.M.E., :

Defendants.

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06 Civ. 2085 (LAP)

MEMORANDUM AND ORDER

LORETTA A. PRESKA, U.S.D.J.

Plaintiff Frederick Jones ("Plaintiff"), proceeding pro se, brings this action for injunctive relief, damages, and costs against Allen Affordable Housing Development Fund Corporation ("Allen"),¹ a private developer working with the City of New York (the "City") to convert Plaintiff's apartment building into affordable housing units.² Plaintiff asserts that he is entitled to, and has been denied, a variety of services from Allen to minimize the hardship of his relocation during the renovation. Allen

¹ Allen is apparently misidentified in the case caption. (See Memorandum of Law in Support of Defendant Allen A.M.E.'s Motion for Summary Judgment at 1 n.1.)

² (See Am. Compl. [dkt. no. 16].) Defendants Department of Housing Preservation and Development and Department of Housing and Urban Development have been dismissed from this action. [Dkt. no. 26.]

denies that it is obligated to provide Plaintiff with relocation services and moves for summary judgment on the ground that Plaintiff has failed to state a legally cognizable claim. [Dkt. no. 37.] For the reasons set forth below, Allen's motion is GRANTED.

I. BACKGROUND

The factual recitation in my February 21, 2007 Opinion and Order [dkt. no. 26] is incorporated herein, and familiarity with the facts is presumed. By way of summary, Plaintiff is a tenant in a residential apartment building located at 107-05 Sutphin Blvd., Queens, New York. The Building is in the process of being transferred from the City to Allen, to be refurbished and developed into affordable housing. Save for Plaintiff, The City and Allen relocated all tenants of the Building to comparable temporary housing at no cost to the tenants and ensured that the tenants incurred no rental increases at the temporary housing. The City and Allen have offered Plaintiff the same relocation package as was offered to the other tenants, but Plaintiff refuses to move.

Plaintiff complains that he has not been provided with legal assistance or employment counseling, and contends that the denial of these services constitutes a violation of the Administrative Procedures Act ("APA"),

5 U.S.C. § 702 et seq., the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. § 4601 et seq., and the Housing and Community Development Act ("HCDA"), 42 U.S.C. § 5301, et seq. (See Am. Compl. at 1.)

Allen has moved for summary judgment, arguing, in essence, that Plaintiff has failed to state a legally cognizable claim.³

II. DISCUSSION

A. Legal Standard for Summary Judgment

Summary judgment must be granted only if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The court must resolve all ambiguities and draw all factual inferences in favor of the nonmoving party, but that party cannot prevail by showing the "mere existence of some alleged factual dispute between the parties." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,

³ Allen included with its Motion for Summary Judgment an Irby Notice (Notice to Pro Se Litigant who Opposes a Motion for Summary Judgment). See Irby v. NYC Transit Authority, 262 F.3d 412, 414 (2d Cir. 2001); see also Local Civil Rule 56.2. Additionally, I notified Plaintiff by Order that if he did not respond to Allen's motion, I would take the motion under consideration. [Dkt. no. 39.] Plaintiff has not responded to Allen's motion.

247 (1986). The party moving for summary judgment has the initial burden of establishing that no genuine issue of material fact exists. Celotex, 477 U.S. at 323. If the moving party satisfies this burden, the burden shifts to the non-movant to come forth with evidence demonstrating a genuine issue of material fact. Id.

"The fact that there has been no response to a summary judgment motion does not, of course, mean that the motion is to be granted automatically. Such a motion may properly be granted only if the facts as to which there is no genuine dispute 'show that the moving party is entitled to a judgment as a matter of law.'" Champion v. Artuz, 76 F.3d 483, 486 (2d Cir. 1996). Additionally, in cases involving pro se plaintiffs, courts have a duty to construe the pro se complaint liberally, while still observing the rules of pleading. See Shehab v. Chas. H. Sells, Inc., No. 04 Civ 01534, 2006 WL 938715, at *3 (S.D.N.Y. Mar 26, 2006).

B. Plaintiff's URA and APA Claims

The URA is meant to minimize the hardships that befall displaced tenants or residents impacted by federally funded redevelopment projects. See 42 U.S.C. § 4621 (2000). The URA mandates that "displacing agencies" provide displaced persons appropriate relocation assistance and temporary

housing. Id. § 4625.⁴ However, such relocation services shall only by provided "to the extent determined by the displacing agency." See id. § 4625(f).

In the event a displaced person believes she has not been provided with appropriate relocation services, she has no private cause of action under the URA. See Wallace v. Chicago Hous. Auth., 298 F. Supp. 2d 710, 723 (N.D. Ill. 2003). Rather, a claim under the APA is the exclusive means for suing in federal court on the basis of a displacing agency's failure to comply with its obligations under the URA. Id.; see also Ackerley Communications of Florida, Inc. v. Henderson, 881 F.2d 990, 992-93 (11th Cir. 1989). Under the APA, "'agency' means [an] authority of the Government of the United States." 5 U.S.C. § 701(b). "The APA requires exhaustion of administrative remedies before federal jurisdiction will lie." Dalton v. City of Las Vegas, No. 07-2216, 2008 WL 2372695, 282 Fed. Appx. 652, at *3 (10th Cir. June 12, 2008); but see Renfroe v. Housing Authority of New Orleans, 03 Civ. 3613, 2004 WL 1630496, at *1-2 (E.D. La. July 19, 2004) (clarifying exhaustion of administrative remedies procedures). And the

⁴ A "displacing agency" is "any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person." Id. § 4601(11).

jurisdictional prerequisite that federal funds were involved in a redevelopment project must also be pleaded for a URA claim, via an APA-provided cause of action, to survive a dispositive motion. See Brody v. Moan, 551 F. Supp. 443, 449-450 (S.D.N.Y. 1982).

Here, Plaintiff's complaint summarily avers that Allen violated both the URA and APA. Allen, a private developer contracting with the City, apparently argues that it may not be sued under the APA because it is not a displacing agency, within the meaning of the URA, nor is it an authority of the Government of the United States, within the meaning of the APA. Because Plaintiff has failed to offer any evidence supporting the proposition that Allen's conduct is regulated by the URA or the APA, Plaintiff's claim must be dismissed.⁵

⁵ But even if Plaintiff had sufficiently shown that Allen qualifies as a displacing agency or is otherwise regulated by the URA and APA, the dearth of evidence and Plaintiff's bare-bones factual allegations, even when the Amended Complaint is construed liberally, are insufficient to survive a motion for summary judgment. Plaintiff only makes four factual allegations in his Amended Complaint against Allen that appear to support a URA claim:

[1] Defendant Allen A.M.E. have [sic] failed to adequately provide relocation assistance such as finding Plaintiff a safe and decent home in his community. [2] Defendant Allen A.M.E. have [sic] failed to provide Plaintiff advisory services to minimize his relocation hardship. (continued)

(continued) [3] Defendant Allen A.M.E. have [sic] failed to provide Plaintiff a documented return date stating he can return back to his original apartment. [4] Defendant Allan A.M.E. have [sic] decided to execute a eviction proceeding against Plaintiff, to avoid complying with statutory obligations and duties Pursuant to applicable federal, state and local law." (See Am. Compl. At 1-2 (errors in original).)

As to each allegation, even if Allen had been found to be subject to URA requirements, Allen would have carried its burden of establishing that no genuine issues of material fact exist.

The uncontroverted evidence shows that the City and Allen provided Plaintiff with at least twelve different addresses of temporary apartment buildings available for Plaintiff's relocation, at no cost to Plaintiff. (See Reed Aff. ¶ 19.) Plaintiff even conceded that he was offered and declined appropriate temporary housing. (Id. Ex. C at 14/23-15/2.) Thus, it can hardly be said that any displacing agency in this case failed to provide the requisite relocation services. See 42 U.S.C. § 4625.

As to Plaintiff's allegation that Allen failed to provide advisory services to minimize Plaintiff's relocation hardship, no genuine issue of material fact exists because the URA does not impose such an obligation on displacing agencies. As I ruled previously, "Plaintiff provides no support for his assertion that he is entitled as a matter of right to the additional services," and no such entitlement exists under the statute. (See February 21, 2007 Opinion and Order [dkt. no. 26] at 6.) Rather, a displacing agency shall provide advisory services to displaced tenants only "to the extent determined by the displacing agency." See 42 U.S.C. § 4625(f). Of course, a displacing agency's discretion as to what relocation services it elects to offer may be reviewable by federal courts pursuant to the APA. See 5 U.S.C. § 701 et seq.

Similarly, the URA does not impose an obligation on displacing agencies to provide a documented return date stating when displaced tenants may return to their original apartments. Thus, there is no genuine issue as to Plaintiff's third allegation against Allen. (continued)

C. Plaintiff's HCDA Claims

In the Amended Complaint, Plaintiff also states that his action is brought "pursuant to . . . Housing and Community Development Act." (Am. Compl. at 1.) Presumably, Plaintiff intended to assert a claim under 42 U.S.C. § 5301, et seq. In its summary judgment motion, Allen did not address Plaintiff's HCDA claim and thus has failed to carry its burden of establishing that no genuine issue of material fact exists as to that claim.

Nevertheless, without more specificity from Plaintiff, the mere general invocation of the HCDA in the Amended Complaint is insufficient to plead such a claim adequately. Accordingly, construing Allen's motion as a motion to dismiss,⁶ Plaintiff's HCDA claim, is DISMISSED. While such dismissal would ordinarily be without prejudice to re-pleading, such re-pleading would be futile because the HCDA does not confer a private right of action upon individuals.

(continued) Finally, the fact that Allen has apparently initiated an eviction action against Plaintiff in state court has no bearing on this action.

Accordingly, even if the evidence and Plaintiff's conclusory allegations had established that the URA or APA apply to Allen, Allen would have satisfied its burden of establishing that no genuine issues of material fact exist as to Plaintiff's claims.

⁶ See Gravel v. Prison Health Services, 07 Civ. 237, 2008 U.S. Dist. LEXIS 92230, at *6 (D. Vt. Nov. 12, 2008) (construing a motion for summary judgment as a motion to dismiss when the movant argued that no claim was sufficiently pleaded).

See Mair v. City of Albany, New York, 303 F. Supp. 2d 237, 243-44 (N.D.N.Y. 2004) (but noting one exception); People's Hous. Dev. Corp. v. City of Poughkeepsie, New York, 425 F. Supp. 482, 493 (S.D.N.Y. 1976). Accordingly, the dismissal is with prejudice.

III. CONCLUSION

For the foregoing reasons, Allen's motion for summary judgment, with respect to Plaintiff's URA and ADA claims, [dkt. no. 37] is GRANTED. Plaintiff's HCDA claim [dkt. no. 16] is DISMISSED. The Clerk of the Court shall mark this action closed and all pending motions denied as moot.

SO ORDERED

Dated: December 8, 2008
New York, New York


LORETTA A. PRESKA, U.S.D.J.